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**SENT VIA EMAIL (deltaplanNOP@deltacouncil.ca.gov)**

Delta Stewardship Council  
Attn: CEQA for Amending the Delta Plan  
980 Ninth Street, Suite 1500  
Sacramento, Calif. 95814

**RE: Delta Plan Amendments EIR  
Comments from Local Agencies of the North Delta**

Dear Chairman Fiorini and Members of the Council:

These comments on the Draft Program Environmental Impact Report (“PEIR”) for Proposed Amendments to the Delta Plan are submitted on behalf of the Local Agencies of the North Delta (“LAND”). LAND is a coalition comprised of reclamation and water districts in the northern geographic area of the Delta.<sup>1</sup>

**The Notice of Preparation is Premature and Incomplete**

A Notice of Preparation (“NOP”) should describe the proposed project with enough information that the public can meaningfully comment on it and inform the preparation of an EIR. (See CEQA Guidelines, § 15124.) Here, the project description is incomplete and confusing. In particular, the project described in the NOP is much less specific than the materials provided for the Delta Stewardship Council (“Council”) February 23-24th meeting. (See Agenda Item 12, Attachment 3, pp. 5-15.)

Here, the information that is provided about Conveyance, promotes construction of the Delta Tunnels (a.k.a. “WaterFix” project) as a means to provide new dual conveyance of water around the Delta. Additional work should

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<sup>1</sup> LAND member agencies cover over 120,000 acres of the Delta; current LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067, the Brannan-Andrus Levee Maintenance District, and Maintenance Area 9 South. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

be done to refine the proposed amendments, consistent with the 2009 Delta Reform Act and the ruling of the Sacramento Superior Court in summer 2016 regarding the inadequacies of the 2013 Delta Plan, prior to commencing environmental review.

The Project Described Is Inconsistent with the Statute and the Trial Court's Ruling

The Council was created in legislation to achieve the state mandated coequal goals for the Delta. “‘Coequal goals’ means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (Wat. Code, § 85054.) The Discussion Draft Amendment for Water Conveyance, Storage and Operation from the Council's February 22-23rd meeting (Attachment 3, p. 4), mentions the need to minimize disruptions to Delta Communities, yet none of the “promoted recommendations” listed in the Discussion Draft or the NOP refer to protecting and enhancing the Delta.

In addition to Delta as a Place statutory requirements, the trial court ordered the Council to:

1. Adopt quantified or otherwise measurable targets associated with achieving reduced Delta reliance, reduced environmental harm from invasive species, restoring more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act;
2. Provide a flow policy that includes quantified or otherwise measurable targets; and
3. Promote options for water conveyance and storage systems.

Looking at the Ruling as a whole, it is obvious that any new or improved conveyance project that is a covered action must also reduce reliance on the Delta in order to be consistent with the Delta Plan. (Wat. Code, § 85021; see also Ruling, p. 43 [“plain language of section 85021 requires all water supply needs beyond the date of [the Plan's] adoption to be balanced, and reduced reliance must be a part of this balancing”].) Yet, the draft policies never mention reduced reliance, and it is entirely unclear how construction and operation of more points of diversion serving areas outside the Delta reduces reliance on the Delta. Such actions would appear to increase reliance in contravention of the 2009 Delta

Reform Act as well as the trial court's ruling against the State and Federal Water Contractors' arguments that reduced reliance did not apply to areas that receive exported Delta water.

### The 19 Principles Are Incomplete and Need to Be Updated

The NOP states the Conveyance, Storage and Operation recommendations are guided by Water Code section 85304 and the 19 Principles adopted in November 2015. Yet the Principles are incomplete and fail to provide any guidance with respect to key aspects of the coequal goals.

First, there is no reference to protecting the Delta as a Place. The Delta Plan describes the unique characteristics of the Delta in Chapter 5, and conveyance that is consistent with the Delta Plan would protect these characteristics. Recreation and agriculture in particular are key aspects of the Delta as a Place and must be specifically assessed when considering consistency of proposed Conveyance, Storage and Operation with effects in the Delta.

The 19 Principles also assume there will be water supply available for any conveyance project, and provide no requirement that a water supply surplus to the needs of the Delta (and other senior water rights holders) be identified to serve any new or modified conveyance project that is a covered action. As was painfully learned over the last few years of drought, there are times when there is no additional supply available. The policies being developed now must address this issue head on and require identification of water to serve any new or modified conveyance project through the preparation of a Water Availability Analysis. Likewise, Operational principles must also include Delta as a Place and water supply availability requirements for consistency.

The 19 Principles also fail to mention avoidance of effects on terrestrial species, focusing only on protection of fisheries. As described in the Delta Plan in Chapter 5, the Delta hosts a variety of special status terrestrial species, including protected birds migrating through the Pacific Flyway. Massive land disturbances and fragmenting wildlife corridors would be inconsistent with the protection of these species.

### Delta Stewardship Council Recommendations for Conveyance, System Storage, and the Operation of Both Are Not Best Available Science

In addition, the proposed policies must be guided by best available science, as defined by the Council. (Cal. Code Regs., tit. 23, § 5001, subd. (f) & Appendix

1A.) The Council's February 23-24th meeting packet included "Updated Scientific Findings for Delta Plan Amendment Concerning Storage, Conveyance and Operation" as Attachment 4. Yet this attachment simply contains short summaries of numerous studies on topics generally relating to water management. The materials never connect any particular study with the proposed policies concerning storage, conveyance and operation. Simply providing a list of scientific study summaries does nothing to show why the policies now proposed are "best available science." For illustration, the first paper listed in Attachment 4 pertains to the effect of marijuana cultivation on aquatic and terrestrial wildlife. What is the relevance of these findings to the proposed Delta Plan amendments?

Absent a synthesis of the cited materials, there is no scientific foundation for the proposed amendments. Whatever new policies are adopted must be correlated to relevant scientific findings in conformance with the Council's own definition of Best Available Science. No effort has been made in this regard yet, which is fatal to the validity of the proposed Delta Plan amendments.

Environmental Review Will Be Simplified If the Council Does Not Promote a Specific Conveyance Project

In contravention of other Delta Plan policies that promote the co-equal goals, the currently proposed conveyance policies blindly call for completion of the Delta Tunnels. As explained above there is no reason the Council should promote any specific conveyance project. Instead, the Delta Plan should guide new conveyance projects and modifications to existing conveyance toward meeting the coequal goals consistent with the policies, regulations and recommendations that have been upheld in the Delta Plan.

If the Council instead chooses to specifically promote the Delta Tunnels (and/or specific storage projects), then the environmental review of those Plan amendments needs to review the myriad significant and unavoidable environmental effects of those actions. The trial court did not rule on the adequacy of the 2014 Program EIR for the Delta Plan, and the Council is not proposing to tier review of these amendments off of that EIR. This makes sense. But the only reason the Delta Plan is "in effect" right now is because the Council appealed the trial court ruling ordering that the Delta Plan be set aside. Given these procedural complexities, it would make a lot more sense for the Council to comply with the writ and amend the Delta Plan in conformance with the trial court's ruling. This would include adding new conveyance, storage and operation policies, among other amendments.

Without the BDCP in place, there is no conveyance project that would automatically become part of the Delta Plan. Now, perhaps in an effort to validate the legitimacy of Delta Tunnels project, which has no longer has the restoration element that was crucial to the 2009 Delta Reform Act, the Council is pushing to rush the adoption of conveyance, storage and operational policies in a process artificially separated from compliance with the trial court's ruling. We suggest that the Council instead take a comprehensive approach that addresses the trial court's ruling and the need to update the Delta Plan. This would include significant input from the public on how the Plan should guide these types of covered actions. After the policies are fully developed, all of the amendments should be reviewed together in an environmental document. To pursue the piecemeal approach now proposed (making selected amendments while a multi-year appeal is pending) is a waste of public resources and does not follow the Council's statutory mission. We submit it would be better for the Council to say nothing about conveyance than to promote the extremely environmentally destructive Delta Tunnels project now proposed by DWR and BOR.

### Conclusion

The Council should not select or promote any one conveyance option, but should provide general guidance consistent with the 2009 Delta Plan. This should be done in a comprehensive update process that also complies with the trial court's writ of mandamus. By pursuing a holistic approach now, the Delta Plan can become the integrated roadmap for a better future in the Delta. We look forward to working collaboratively with the Council and its staff to ensure that the Council can fulfil its statutory role as an integrator of Delta planning.

Very truly yours,

**SOLURI MESERVE**

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cc (via email):

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